

STATE OF NEW HAMPSHIRE
SUPREME COURT
ADVISORY COMMITTEE ON JUDICIAL ETHICS

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QUESTION PRESENTED:

Does the Code of Judicial Conduct prohibit a part-time judge from listing his or her law practice in the Martindale-Hubbell Law Directory, when the listing includes a reference to being a judge?

DISCUSSION AND APPLICATION OF CODE OF JUDICIAL CONDUCT:

A part-time judge who also practices law is required to be particularly sensitive to the potential impact his or her judicial position may have on private pursuits. Maine Judicial Ethics Committee, Advisory Opinion 99-1 (1999) (by-line in published article refers to author as a probate judge), citing ABA Committee On Ethics and Professional Responsibility, Informal Opinion 1473 (1981).

Canon 2A of the Code of Judicial Conduct (Supreme Court Rule 38) requires that all judges “. . . shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” Canon 2B of the Code of Judicial Conduct prohibits judges from lending “the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge.” Part-time judges must, therefore, be particularly careful not to use or create the appearance that their judicial office is being used to promote the private interests of the judge or others.

Inclusion of the reference to his or her status as a judge in the Martindale-Hubbell Law Directory at least creates the impression that the reference is being used to promote the private interests of the judge. Moreover, it may have the actual effect of directory users choosing the judge as a lawyer because directory users might infer that the lawyer/judge is more authoritative or because the listing conveys the impression that the judge may be in a special position as a lawyer to influence other judges. N.Y. Advisory Committee On Judicial Ethics, Opinion 92-125 (1992) (part-time judge advertising private law practice with reference to judicial position).

In addition to the opinions from other sources cited above, the committee notes that advisory opinions from other jurisdictions are in accord with this opinion and recommendation in a variety of similar circumstances. See Virginia Judicial Ethics Advisory Committee, Opinion 99-8 (1999) (reference to part-time judge's judicial status in Martindale-Hubbell directory); District of Columbia Advisory Committee on Judicial Conduct, Opinion No. 3 (1992) (retired judge's reference to previous judicial position in biography contained in arbitration association advertising); South Carolina Advisory Committee on Standards of Judicial Conduct, Opinion No. 20-2000 (2000) (part-time judge including reference to judicial position in newspaper advertisement for private practice); South Carolina Advisory Committee on Standards of Judicial Conduct, Opinion No. 21-1997 (1997) (retiring judge's law firm referring to judicial position in newspaper announcement of judge joining the firm); South Carolina Advisory Committee on Standards of Judicial Conduct, Opinion No. 1-1998 (1997) (announcement of opening of private practice containing reference to part-time judge's position mailed to friends, family, local bar association, and newspaper); South Carolina Advisory Committee on Standards of Judicial Conduct, Opinion No. 6-1987 (1987) (retired judge's name appearing on firm letterhead, identified as "Retired Judge"); N.Y. Advisory Committee on Judicial Ethics, Opinion 96-88 (1996) (use of honorific "Hon." with name of part-time judge in advertisement for mediation association); N.Y. Advisory Committee on Judicial Ethics, Opinion 92-125 (1992) (reference to judicial title in advertisement of private practice); N.Y. Advisory Committee on Judicial Ethics, Opinion 97-61 (1997) (part-time judge's or judge's firm announcements containing reference to judicial position mailed to firm's clients); and N.Y. Advisory Committee on Judicial Ethics, Opinion 89-12 (1989) (part-time judge's name and judicial position on firm's stationery).

ADVISORY OPINION ON THE QUESTION PRESENTED:

The Code of Judicial Conduct prohibits a part-time judge from referring to his or her judicial position in a listing in the Martindale-Hubbell Law Directory.

THIS ADVISORY OPINION IS ISSUED BY UNANIMOUS CONCURRENCE OF ALL COMMITTEE MEMBERS.

James R. Patten, Vice-Chair

CAUTIONARY STATEMENT

This opinion is advisory only and not binding on the judicial conduct committee, which may, in its discretion, consider compliance with an advisory opinion by the requesting individual as a good faith effort to comply with the Code of Judicial Conduct. Rule 38-A(4)(c).